

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,

-vs-

ROD BLAGOJEVICH,
Defendant.

Case No. 08 CR 888

Chicago, Illinois
April 28, 2011
2:05 p.m.

VOLUME 5 PM
TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES B. ZAGEL

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1 (Proceedings heard in open court:)

2 THE COURT: Counsel approach briefly.

3 We have resolved one of the -- 136 and 157 are the
4 two open ones, I believe. We contacted 136, and 136 informed
5 us that she's perfectly able to serve. Her issue had to be
6 that they would call her in. Remember we called her in early.
7 The other issue with respect to school apparently is not an
8 issue, so she's okay.

9 Where are we with a number now?

10 MR. SCHAR: We're at 216.

11 THE COURT: No, no, I'm talking about total.

12 MR. SCHAR: We were at -- through cause challenges, I
13 want to say we're at 43 or 44, although we haven't done all
14 challenges to the last group.

15 THE COURT: Were we at 40 or 41?

16 MS. HAMILTON: Before we started today?

17 THE COURT: Yeah.

18 MS. HAMILTON: With the inclusion of 136, I have 41.

19 THE COURT: Yeah, that's what I thought, too.

20 So we have a potential from previous days to get to
21 42, depending on 157. That's it.

22 Now for today, I see one. What I see is 207.

23 MR. SCHAR: Right.

24 THE COURT: One, 212, I'm excusing because I think he
25 doesn't understand English very well. I'm basing that on the

1 way he spoke. I'm basing it on the fact that he said he
2 doesn't speak English very well and on the fact that he
3 obviously did not understand most of the questions on the
4 questionnaire.

5 Anybody have a problem with this?

6 MR. SCHAR: No, Judge.

7 THE COURT: I failed to -- no, I didn't fail. I'm
8 sorry, I thought I did, but I hadn't. We have 113, 114, and I
9 haven't yet asked for challenges one way or the other, and I'm
10 not going to yet. I'm going to take some more. Maybe we'll
11 stop again at -- oh, let's just keep going for a while, and
12 I'll stop when it looks right.

13 216.

14 THE CLERK: 216? 216.

15 (Prospective Juror No. 216 enters courtroom.)

16 THE COURT: 216.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: I'm just going to go over some of these
19 with you, not all of them.

20 PROSPECTIVE JUROR: Okay.

21 THE COURT: What do you do for a living?

22 PROSPECTIVE JUROR: I work for a bank, Royal Bank of
23 Scotland.

24 THE COURT: And what do you do at that bank?

25 PROSPECTIVE JUROR: Collateral management globally

1 for the derivative trading book. So it's risk mitigation
2 basically, collateralizing exposure.

3 THE COURT: And how do you do this?

4 PROSPECTIVE JUROR: We do this by receiving
5 information on all of the bank's activities globally and then
6 collateralizing that exposure with clients.

7 THE COURT: And the method you do that is by wire, by
8 computers?

9 PROSPECTIVE JUROR: Yes, computers.

10 THE COURT: And does this involve getting consent of
11 account holders or customers?

12 PROSPECTIVE JUROR: There is. There's agreements
13 that are in place between the bank and the clients that are
14 legally binding.

15 THE COURT: Preexisting agreements?

16 PROSPECTIVE JUROR: Preexisting, yes. So there's no
17 collateralization unless there's a preexisting agreement that
18 has all the pertinent terms and provisions.

19 THE COURT: So they've permitted you to
20 collateralize -- use their assets as collateral.

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: Okay. Now, is this something you like in
23 each individual transaction you would accomplish very quickly?

24 PROSPECTIVE JUROR: We do. It's an aggregate
25 portfolio, so it's -- there's -- everything is preexisting in

1 the agreement, so whatever products are going to be covered
2 that are eligible for collateralization are going to be known
3 and then filtered in, so everything's done very quickly. We
4 get one number that needs to be collateralized.

5 THE COURT: Okay. You supervise 14 people?

6 PROSPECTIVE JUROR: That's correct.

7 THE COURT: You have three children. 23 is the
8 oldest and 12 is the youngest?

9 PROSPECTIVE JUROR: Yes, that's correct.

10 THE COURT: And what does your husband do?

11 PROSPECTIVE JUROR: He works for Chicago Truck. It's
12 heavy duty Volvo. He's in the mechanics union, so -- he's not
13 a mechanic, but he deals in parts and repairs.

14 THE COURT: And I think you said this, you manage
15 collateral for the U.S. region.

16 PROSPECTIVE JUROR: Yes, that's right.

17 THE COURT: You -- you hired a lawyer for your
18 daughter's claim?

19 PROSPECTIVE JUROR: Uh-huh.

20 THE COURT: Did it take a long time to resolve?

21 PROSPECTIVE JUROR: About three or four weeks it
22 took. It was an automobile accident.

23 THE COURT: Did you regard that as speedy?

24 PROSPECTIVE JUROR: Yeah, yeah.

25 THE COURT: Okay. You're right. It was speedy.

1 PROSPECTIVE JUROR: It was a lot of information.

2 THE COURT: I don't want to get into the details, but
3 you were once interviewed by the FBI?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: And how long an interview was that?

6 PROSPECTIVE JUROR: Hour and a half, two hours maybe.

7 THE COURT: Okay. And how long ago was that?

8 PROSPECTIVE JUROR: Just a few months. It was in the
9 winter, so maybe six months.

10 THE COURT: And you were also interviewed by the
11 State Department?

12 PROSPECTIVE JUROR: Yes.

13 THE COURT: And was that regarding a State Department
14 employee or an employee of yours?

15 PROSPECTIVE JUROR: It was an employee of mine that
16 was looking to get a position within the United Nations.

17 THE COURT: Right. So this was more of a background
18 interview for you -- for her.

19 PROSPECTIVE JUROR: Yes, for her, on her behalf, yes.

20 THE COURT: Your childhood friend ran for alderman
21 but was not elected. Did you participate in the campaign?

22 PROSPECTIVE JUROR: Just fundraising, a couple of
23 cocktail parties and things like that.

24 THE COURT: Right. Was the election close?

25 PROSPECTIVE JUROR: I don't think so.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR: Unfortunately, no.

3 THE COURT: Was it fun for you?

4 PROSPECTIVE JUROR: Uh-huh. It was.

5 THE COURT: The contributions you made, would you
6 regard them as a lot of money, a little money, or somewhere in
7 between?

8 PROSPECTIVE JUROR: No, it wasn't a lot of money. A
9 little money.

10 THE COURT: You were asked what your primary leisure
11 activities are, hobbies and interests, and basically it
12 involved your children's activities.

13 PROSPECTIVE JUROR: It does, yes.

14 THE COURT: So your hobbies and interests are your
15 children's activities.

16 PROSPECTIVE JUROR: Yeah, they have quite full
17 schedules, and they're both -- two of the kids are in
18 competitive sports, and travel is required.

19 THE COURT: So basically, the primary leisure
20 activities, hobbies and interests are not entirely chosen
21 voluntarily by you, is that correct?

22 PROSPECTIVE JUROR: That's correct.

23 THE COURT: Okay. Your daughter was treated at
24 Children's Memorial when she was very small?

25 PROSPECTIVE JUROR: Uh-huh.

1 THE COURT: How long ago would you say that was?

2 PROSPECTIVE JUROR: 22 years.

3 THE COURT: Okay. And you've donated to the
4 hospital?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: Often or just one time?

7 PROSPECTIVE JUROR: Uh-huh, annually.

8 THE COURT: Large amounts of money, small amounts of
9 money?

10 PROSPECTIVE JUROR: We usually do the annual raffles
11 for the car giveaways, I think it's around \$200.

12 THE COURT: Okay. You didn't follow the case before
13 closely, is that correct?

14 PROSPECTIVE JUROR: I did not, no.

15 THE COURT: And so you have actually formed no
16 opinion.

17 PROSPECTIVE JUROR: I don't. I didn't -- I mean, I
18 saw headlines and various bits of it, but, no, in all honesty,
19 I don't have an opinion one way or the other.

20 THE COURT: And you do understand that during the
21 course of this case, if you're on the jury, you would have to
22 avoid news coverage of this.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: And during the course of the trial,
25 you're supposed to depend upon, rely upon and weigh only the

1 evidence you hear in open court. Do you understand that?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Sometimes some of that evidence may
4 remind you of something you heard or read before that you've
5 just forgotten about now. You understand that could happen?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: If that happens, when you go back to
8 decide the case, you have to disregard, that is, to put off to
9 one side anything you remembered about coverage or remembered
10 from what happened at another time and judge this case only on
11 the basis of the evidence that you've heard or read in the
12 court. Do you understand that?

13 PROSPECTIVE JUROR: I do, yes.

14 THE COURT: Could you do that?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: The one question you said you didn't
17 understand is a question that a few other jurors said they
18 didn't understand, so --

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: -- I'll explain it to you.

21 It says, "At the conclusion of the case, the Court
22 will instruct you as to the law that you must apply to this
23 case. Are you willing to follow that law as the Court gives
24 it even if you disagree with the law as the Court states it?"

25 What happens at the end of the case is you hear all

1 of the evidence, and then I sit up here and I read to you a
2 series of instructions about what the law is, and I define
3 various legal terms, and then when all that's said and done, I
4 give you everything I've written, everything I've said in
5 written form, and that's the law you have to follow.

6 Now, sometimes when I'm reading those instructions, a
7 juror may think, well, that may be what the law is, but I
8 don't think that's a good law, or the law ought to be changed.

9 PROSPECTIVE JUROR: I see.

10 THE COURT: And sometimes I have to tell you the same
11 thought crosses my mind; but under our rules, you, a juror,
12 and I, the trial judge, have to respond -- have to respect and
13 follow the rules which are laid down by the Congress of the
14 United States and by the higher courts. That's what the
15 meaning of the question is.

16 Will you follow the law even if you happen to
17 disagree with it?

18 PROSPECTIVE JUROR: Okay.

19 THE COURT: Yes or no?

20 PROSPECTIVE JUROR: I -- yes, to the best of my
21 ability, I would do that.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: You do volunteer work?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: A lot of it, a little of it?

2 PROSPECTIVE JUROR: A little.

3 THE COURT: Thank you.

4 (Prospective Juror No. 216 exits courtroom.)

5 (Prospective Juror No. 217 enters courtroom.)

6 THE COURT: 217?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: What do you do at work?

9 What do you do at work?

10 PROSPECTIVE JUROR: I'm a human resource manager
11 director.

12 THE COURT: And you have a college degree?

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: Is that what you studied in college,
15 human resources management?

16 PROSPECTIVE JUROR: No, business management.

17 THE COURT: Okay. And basically, you're in charge of
18 hiring and firing and unemployment claims and workmen's comp
19 and payroll and that kind of stuff.

20 PROSPECTIVE JUROR: Yes.

21 THE COURT: And according to this, you supervise just
22 one other person.

23 PROSPECTIVE JUROR: Directly, yes.

24 THE COURT: And what does your husband do?

25 PROSPECTIVE JUROR: He's a cook for a pizza

1 restaurant.

2 THE COURT: How long has he been working there?

3 PROSPECTIVE JUROR: Almost ten years.

4 THE COURT: You had a family member in the military?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: A relative or a friend?

7 PROSPECTIVE JUROR: Brother, relative.

8 THE COURT: Your brother?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: When was he in the military?

11 PROSPECTIVE JUROR: He's still serving.

12 THE COURT: He's still serving? Do you remember
13 which branch?

14 PROSPECTIVE JUROR: He's in Fort Benning, Georgia.

15 THE COURT: Okay. Do you see him often?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Okay. You have a brother who was
18 convicted of a crime?

19 PROSPECTIVE JUROR: Yes.

20 THE COURT: And he's out now?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: How's he doing?

23 PROSPECTIVE JUROR: He's on house arrest now.

24 THE COURT: Yeah.

25 PROSPECTIVE JUROR: Doing better.

1 THE COURT: Have you ever been arrested or convicted
2 of a crime?

3 PROSPECTIVE JUROR: No.

4 THE COURT: And you were once a victim of a crime for
5 which somebody was convicted?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: And got a 15-year sentence?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Were you satisfied with the result? You
10 don't have to be, just tell me one way or the other.

11 PROSPECTIVE JUROR: No.

12 THE COURT: You thought the sentence was too light or
13 too heavy?

14 PROSPECTIVE JUROR: Too light.

15 THE COURT: What do you do for hobbies?

16 PROSPECTIVE JUROR: I scrapbook. That's it.

17 THE COURT: When did you start doing that?

18 PROSPECTIVE JUROR: Right after I had my daughter.

19 THE COURT: How much time do you spend doing the
20 scrapbooks?

21 PROSPECTIVE JUROR: Not enough time, but at least a
22 few hours a week.

23 THE COURT: How old is your daughter?

24 PROSPECTIVE JUROR: She's going to be three on
25 Saturday.

1 THE COURT: Where do you get your news from?

2 PROSPECTIVE JUROR: Usually the Internet, CNN, MSNBC.

3 THE COURT: Do you get a lot of news? Is news a big
4 thing for you?

5 PROSPECTIVE JUROR: No, not really.

6 THE COURT: And you never saw news about this case.

7 PROSPECTIVE JUROR: No, I didn't follow it.

8 THE COURT: Right.

9 Is there lots of stuff in the news that you just
10 don't follow because you're not interested?

11 PROSPECTIVE JUROR: That's true.

12 THE COURT: So basically, your interests in life are?

13 PROSPECTIVE JUROR: Say that one more time?

14 THE COURT: Your interests in life are what?

15 PROSPECTIVE JUROR: My interests in life, I guess
16 it's work and my family.

17 THE COURT: Okay. And how long have you worked for
18 your company?

19 PROSPECTIVE JUROR: Five-and-a-half years.

20 THE COURT: Did you replace somebody who was there?
21 Did you take somebody else's job?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Is it a new company?

24 PROSPECTIVE JUROR: No, it's a -- it's about a
25 50-year-old company, and the owners have had it for about 10,

1 15 years, and it's just been growing tremendously. So I've
2 been there since they first started.

3 THE COURT: Well, for what it's worth, they think
4 very highly of you.

5 PROSPECTIVE JUROR: Thank you.

6 THE COURT: If you served on this jury, would you be
7 a fair and impartial juror?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Thank you.

10 (Prospective Juror No. 217 exits courtroom.)

11 (Prospective Juror No. 218 enters courtroom.)

12 THE COURT: You're No. 218?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: What do you do for a living?

15 PROSPECTIVE JUROR: I'm an IT technician in a
16 freight-forwarding company.

17 THE COURT: And how long have you been employed by
18 them?

19 PROSPECTIVE JUROR: Approximately three years.

20 THE COURT: And what do you actually do at work each
21 day?

22 PROSPECTIVE JUROR: I take phone calls about
23 nationwide -- we have branches all over the United States, and
24 we take phone calls, computer -- about computer issues and we
25 fix them remotely. Also locally at the branch we also take

1 care of computer problems.

2 THE COURT: How much of your work is dealing with
3 computers and computer problems?

4 PROSPECTIVE JUROR: Probably 90 percent of the time.

5 THE COURT: Who has the car wash?

6 PROSPECTIVE JUROR: It used to be my stepdad that
7 passed away and also his brother years ago.

8 THE COURT: Does your wife work?

9 PROSPECTIVE JUROR: Yes.

10 THE COURT: And what does she do?

11 PROSPECTIVE JUROR: Same company. She's an air
12 export agent.

13 THE COURT: What did you do with respect to the Air
14 Force?

15 PROSPECTIVE JUROR: Excuse me?

16 THE COURT: What did you do with the Air Force?

17 PROSPECTIVE JUROR: I was a fighter plane mechanic.

18 THE COURT: And how long did you do that work?

19 PROSPECTIVE JUROR: Four years active, four years
20 inactive.

21 THE COURT: And where did you do that work?

22 PROSPECTIVE JUROR: Most of my duty was in North
23 Carolina.

24 THE COURT: What was your rank on discharge?

25 PROSPECTIVE JUROR: Senior airman E3 -- I'm sorry --

1 E4.

2 THE COURT: Ever been arrested or convicted of a
3 crime?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: What was that?

6 PROSPECTIVE JUROR: Not convicted, arrested.

7 THE COURT: Yeah, either one. You were arrested for
8 what?

9 PROSPECTIVE JUROR: I've been arrested for -- I think
10 it was a misdemeanor before the Air Force for shoplifting.

11 THE COURT: And what happened to it?

12 PROSPECTIVE JUROR: It got -- my record got expunged.
13 It got dropped.

14 THE COURT: How long ago was that?

15 PROSPECTIVE JUROR: Back in '97 I want to say, '96,
16 '97.

17 THE COURT: And where was it?

18 PROSPECTIVE JUROR: Here in Chicago.

19 THE COURT: Okay. Family member or close friend ever
20 been arrested or convicted?

21 PROSPECTIVE JUROR: My wife years ago because she
22 didn't have a license.

23 THE COURT: A driver's license?

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: Okay. And anybody else?

1 PROSPECTIVE JUROR: My brother, my brother years ago
2 also for theft, misdemeanor theft. I'm not sure exactly
3 what -- the specifics.

4 THE COURT: Okay. You hired a lawyer for your wife's
5 immigration status?

6 PROSPECTIVE JUROR: Yes.

7 THE COURT: Were you satisfied with the result?

8 PROSPECTIVE JUROR: Yes.

9 THE COURT: Okay. You served on a jury.

10 PROSPECTIVE JUROR: Yes, in DuPage County.

11 THE COURT: You don't remember much of the details,
12 is that right?

13 PROSPECTIVE JUROR: No, I do not.

14 THE COURT: Okay. You belong to anything? Any
15 group, any club, any organization of any sort?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Do you occasion -- it says that
18 occasionally you go to the local church.

19 PROSPECTIVE JUROR: Occasionally for special
20 occasions.

21 THE COURT: Is it fair for me to say you think that
22 our current system of electing people is not necessarily the
23 best in the world?

24 PROSPECTIVE JUROR: Correct.

25 THE COURT: If you sit on this jury what you're going

1 to be asked to decide is nothing about politicians in general
2 and nothing about the political system.

3 What you're going to be asked to decide is whether
4 the government has proved its case against one specific person
5 and whether they proved that that person violated certain
6 specific federal laws. That's all you're going to be asked to
7 decide.

8 Will your -- will you be able to decide that on the
9 basis of all the evidence you hear and not some general ideas
10 that politicians are bad guys?

11 PROSPECTIVE JUROR: Yes, I believe so.

12 THE COURT: Favorite hobbies, favorite activities,
13 what do you do for leisure?

14 PROSPECTIVE JUROR: Watch movies, hang out with
15 friends, watch TV, do things around the house.

16 THE COURT: Where do you get your news from?

17 PROSPECTIVE JUROR: Every so often, I watch morning
18 news getting ready for work or sometimes on the web,
19 headlines.

20 THE COURT: Are you a big news hound or is it just
21 something you take a little of?

22 PROSPECTIVE JUROR: No, just if someone's talking
23 about it or somebody might share a link or something. That's
24 the only reason why I would take a look.

25 THE COURT: And you were once treated at Children's

1 Memorial Hospital yourself?

2 PROSPECTIVE JUROR: Years ago, probably '96, '95.

3 THE COURT: How old were you then?

4 PROSPECTIVE JUROR: Oh, I was -- probably even
5 younger than that. I might have been 14, 15.

6 THE COURT: Yeah.

7 PROSPECTIVE JUROR: Something like that.

8 THE COURT: You didn't follow any previous news
9 coverage in this case?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Do you recall -- without remembering any
12 details, do you recall at least seeing it mentioned now and
13 then?

14 PROSPECTIVE JUROR: The one where -- this one we're
15 talking?

16 THE COURT: Yes.

17 PROSPECTIVE JUROR: Yes.

18 THE COURT: But you don't remember any of the
19 details?

20 PROSPECTIVE JUROR: No, I was really just -- I might
21 have taken a look just to see what the whole jury issue is
22 going on.

23 THE COURT: Okay.

24 PROSPECTIVE JUROR: If I was going to get called back
25 because I have a work trip that's coming up.

1 THE COURT: When does your work trip come up?

2 PROSPECTIVE JUROR: May 11th through the 14th.

3 THE COURT: And what's that for?

4 PROSPECTIVE JUROR: It's we're building -- we're
5 moving an office in Charlotte, North Carolina. I have a
6 letter from work.

7 THE COURT: Yeah, I saw the letter.

8 PROSPECTIVE JUROR: Okay.

9 THE COURT: I do want you to know I will consider
10 that, but there's no guarantee one way or the other. Do you
11 understand that?

12 PROSPECTIVE JUROR: I was going to book the travel
13 yesterday.

14 THE COURT: Yeah.

15 PROSPECTIVE JUROR: So I need to know when I can --

16 THE COURT: You'll know --

17 PROSPECTIVE JUROR: -- book the travel.

18 THE COURT: You'll know very soon.

19 PROSPECTIVE JUROR: Thank you.

20 THE COURT: Would you be a fair and impartial juror
21 in this case?

22 PROSPECTIVE JUROR: Say one more time, please?

23 THE COURT: Would you be a fair and impartial juror
24 in this case?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Thank you.

2 (Prospective Juror No. 218 exits courtroom.)

3 THE COURT: Stop now.

4 One note for the record, Juror 219 is a no-show, so
5 that will have to be pursued.

6 So before moving on to the last few that we have,
7 we're going to go up and talk about the ones we haven't talked
8 about yet, so you can come to the lectern.

9 And I believe the open ones now are 213, 214, 216,
10 217, 218.

11 213.

12 MR. SCHAR: Judge, the government will move for
13 cause. Obviously, she's got conflicts with two court
14 appearances which also leads to an issue of litigation; but
15 probably just as importantly, she made clear she doesn't know
16 if she would have trouble judging in this particular case.

17 And you gave her an opportunity to -- her answer
18 actually indicated that as well, but you gave her an
19 opportunity and I think tried to rehabilitate her, and she
20 still hesitated and did not give a clear answer as to whether
21 or not she could judge in this case.

22 So given that and given the fact that, you know, we'd
23 have to take breaks to actually accommodate her court
24 appearances, we think that she's a cause challenge.

25 MR. SOROSKY: We'd strongly object, your Honor,

1 strongly object.

2 First of all, I believe this woman answered Question
3 78, "I believe he's innocent until proven guilty," and of all
4 the jurors, this is the only juror who -- who gave the correct
5 standard, and I think that's what the government is fearful
6 of.

7 MR. SCHAR: That's not what the government is fearful
8 of.

9 MR. SOROSKY: Wait --

10 MR. SCHAR: You know, and, Judge, I don't know what
11 it is with Mr. Sorosky today, but the attacks on the
12 government are not going to, I think, get us anywhere. So if
13 we can just stick with whether or not it's a cause challenge
14 or not without being -- somehow trying to pidgeonhole the
15 government's view as to a concern. I've articulated the
16 government's concern.

17 MR. GOLDSTEIN: Is that similar to the criticism you
18 had of the defense in the motion that they filed that you
19 called crazy yesterday? Is that in any way similar?

20 THE COURT: No, it's actually not similar.

21 The reason --

22 MR. SOROSKY: In any event --

23 THE COURT: Wait, wait, stop.

24 The reason it's not similar, and I want to put an end
25 to this, if you start talking about the other side's intent,

1 why they're doing something, why they're making an argument,
2 at least in this particular context, you're crossing the line.

3 You are not crossing the line if you say, for
4 example, you think that Mr. Schar's objections are stupid.
5 This is okay. But that's the difference between the two.

6 MR. SOROSKY: Well --

7 THE COURT: Unless you think, perhaps, the crazy
8 meant the state of mind of the lawyer as opposed to the
9 content of the motion, but I don't think that was what
10 Mr. Schar was talking about, and if he was, he shouldn't have
11 done it.

12 Go ahead.

13 MR. SOROSKY: Your Honor, the last thing I think is
14 that the government is stupid. They're intelligent and there
15 are --

16 THE COURT: Yeah, but don't tell me why. Just tell
17 me why this juror is swell.

18 MR. SOROSKY: Well, first of all, her legal issues
19 are trivial and meaningless. I think one involved one
20 customer of hers who was removed from the bus and he wanted to
21 get back on the bus.

22 I mean, it's a trivial issue. Perhaps it's important
23 to that man who was off the bus, but that issue is not going
24 to affect her ability to decide this case.

25 And what was the other issue?

1 MS. KAESEBERG: The other, I believe, she said she
2 made a 50 percent downpayment on a bathroom remodel. There
3 was an issue about that.

4 MR. SOROSKY: So in this case, she pays to have her
5 kitchen or home remodeled. The person doesn't do what they
6 were supposed to do after she paid, and she should be
7 discriminated against because someone didn't do their job
8 after she paid? It's silly. Literally silly.

9 And with all due respect, I don't mean to violate
10 your Honor's order about talking about intent, but we could be
11 in *Batson* land here with -- with this type of objection to
12 this woman.

13 THE COURT: My problem's on a different level, and
14 what -- with this potential juror.

15 The first thing that's fairly clear to me is this
16 juror has no desire to serve on this case, but that doesn't
17 make a big deal difference. Lots of people don't want to sit
18 on these cases.

19 But this is what she says, and she has, I think, a
20 pretty good picture of herself: "I am the president/CEO of a
21 company. I create routes, dispatch, organize, plan the
22 overall business, payroll, billing, strategic planning,
23 manage, operate business."

24 I don't know how many of you are familiar with this
25 kind of medical transportation, but what it basically amounts

1 to, much of it paid by Public Aid but some of it paid for by
2 other agencies, these people are transported from wherever
3 they are to get medical assistance.

4 It's a tough business. Lots of sick people on the
5 bus. Lots of things you have to do to be in the business to
6 indicate your understanding of what you have to do if suddenly
7 somebody starts flipping themselves to the floor and going
8 into spasms. It's not a huge profit.

9 But basically this is a business that she wants to
10 keep alive despite the difficulties she has with it, and I
11 think the litigation does matter to her, and I think the one
12 involving the mental patient is particularly important because
13 the problem with the mental patient is if you have somebody
14 running riot on a bus, it loses you other customers.

15 And she explains, in I think a fairly heart-felt way,
16 precisely why it is that -- I'm looking for the passage. She
17 explains precisely why it is that she has a particular problem
18 and a particular relationship to this business.

19 She has two sons who pled guilty, and this is not the
20 kind of parent who takes the view that her children did
21 nothing wrong. With respect to one she said, "I was relieved
22 that he would be off the streets to give himself some time to
23 sober up." "Rescued," this is another one, "rescued before
24 someone else or himself got hurt." His son -- "Her son was
25 sorry to keep drinking and messing up."

1 This is not somebody who is making apologies. She
2 obviously has some tax difficulties, but they seem to be
3 working out because from her tone of voice, I think -- I
4 gather that her tax payment plan, which is being complied
5 with, may be over sooner than it was otherwise planned for.

6 She tithes to her church. She has some charitable
7 work.

8 And then what I thought was a striking line, part of
9 the small parade of America we get every time we have jury
10 selection, this phrase: "What are your primary leisure
11 activities, hobbies and interests? Work. Trying to build my
12 business up because my sons have felony records and will
13 always need a place to work."

14 So this business is pretty crucial to her and pretty
15 crucial for a sensible reason. We had one juror here with a
16 business that she was creating and her description of it --
17 her urgency of her need for it was quite clear. Description
18 of it, her business method, her motives seemed disorganized at
19 best. This is somebody who was the juror I excused hopeful
20 but did not display any particular capability to do what she
21 wanted to do.

22 This prospective juror clearly is capable of doing
23 what she wants to do. She has her goals, and she has a very
24 heartrending reason why she has to have that business intact.

25 I have to weigh that against the only indication

1 there is that serving is not a problem, and that's her answer
2 to Question 14: "Will you be paid by your employer during
3 jury service?"

4 Well, it's not quite right for her because she's
5 self-employed practically, but she answered the question. She
6 said, "Salary from profits." "Does it pose a financial
7 hardship for you?" "No." And then, "I receive profits
8 quarterly and all work will still be done. I will work
9 nights, weekends and days not in the jury -- not on jury
10 duty."

11 So this is somebody who's not trying to dodge
12 service. This is somebody for whom I think the government is
13 making the argument that assuming she's a person of good will,
14 assuming that she's -- has no bias of any kind, she is still
15 nonetheless saying get me out of this and get me out of this
16 because I have to go to court. And to the extent that one of
17 it has to do with money, I think that probably matters to her;
18 but the case of the guy she wants to keep off the bus I think
19 is very important to her, and that's why I think it's in her
20 trial questionnaire.

21 So this is arguably a tough call. There are some
22 reasons to take her and some reasons not to take her, so
23 knowing what I'm thinking about, anybody can speak to this
24 again before I give you a decision.

25 MR. SOROSKY: Well, I -- I can't help but comment on

1 the fact that there have been God knows how many jurors who
2 have answered in their questionnaires just let me use the
3 phrase I think he's guilty, although that might not have been
4 the specific answer in each one. And your Honor has been
5 generous to us in excluding many of those people in an effort
6 to give us a fair trial. I acknowledge that, and the record
7 reflects that.

8 However, there are a number of people still on the
9 panel who your Honor feels he has rehabilitated. Now, it is
10 interesting that only two --

11 THE COURT: Wait, stop for one second. I don't think
12 that this juror is not an impartial juror. I -- that's -- I
13 don't -- there is no factor in my decision on this which will
14 depend on the presumption that this juror will not be fair to
15 the government --

16 MR. SOROSKY: Right.

17 THE COURT: -- as well as fair to the defense.

18 MR. SOROSKY: I understand that, but I can't help but
19 reflect on the fact that the government is moving to exclude
20 the only two people who have said, well, I think he's
21 innocent, or I don't know --

22 MR. SCHAR: She didn't say that.

23 MR. SOROSKY: And --

24 MR. SCHAR: She applied the proper standard. She can
25 be completely fair. That's not the issue --

1 MR. SOROSKY: Right, but --

2 MR. SCHAR: -- with the exception of the judgment --

3 MR. SOROSKY: Allow me to finish.

4 MR. SCHAR: -- and what your Honor has raised.

5 MR. SOROSKY: Let me finish.

6 THE COURT: Let Mr. Sorosky.

7 MR. SOROSKY: The only two people who come up with
8 the word innocence all of a sudden, the government has become
9 the kindest person to the world to these two people and say,
10 oh, my God, these people will have to suffer and lose
11 everything because they have to be in Judge Zagel's courtroom
12 for two months, and Mr. Schar's heart cannot allow that to
13 happen to these people.

14 MR. SCHAR: Judge, I'd say your lecture did not work.

15 THE COURT: Stop, stop.

16 MR. SOROSKY: And -- and this woman also happens to
17 be a woman of color, and -- and -- and we're removing these
18 people from the jury, and -- and I think it's just not fair
19 and right, and this woman should serve as a juror.

20 THE COURT: I do not believe that the race of this
21 juror has any bearing or any part of the reason that Mr. Schar
22 is seeking her excuse from the jury, and I think the statement
23 is made without warrant.

24 With respect to the point that Mr. Schar was going to
25 make, and he's got a point, and the reason I'm raising it is

1 it's as -- in the course of cross-examination on occasion,
2 what the defense has done is recasted the answer of the
3 witness in ways that are improper.

4 This juror did not say that your client's innocent.
5 This juror said your client is innocent until proven guilty.

6 MR. SOROSKY: Correct.

7 THE COURT: And that's the correct legal standard.

8 MR. SOROSKY: Correct.

9 THE COURT: And that is true of I believe every juror
10 who's thus far been accepted.

11 So the truth is is that we're talking about an issue
12 that's not material here.

13 I'm excusing her for cause because I do not want to
14 do to this woman what I believe will happen if she doesn't
15 attend to the business. And I also believe that her anxiety,
16 and I think she will have anxiety, will distract her from her
17 duties.

18 Okay. 214.

19 MR. SOROSKY: No objection.

20 MR. SCHAR: No objection, Judge.

21 THE COURT: Okay. I do note for the record I was
22 going to call him back because I thought I had a CCH issue,
23 but it doesn't appear to be a match, so ...

24 116 -- 216. Anybody have an objection to 216?

25 MR. SCHAR: No, Judge.

1 MR. SOROSKY: Well, she indicated that she had an
2 interview. Maybe -- if the Court would want to do an
3 interview about that interview or do an ex parte interview.

4 THE COURT: Where are we now? Where did she say
5 this?

6 MS. HAMILTON: Question 42.

7 THE COURT: 42?

8 42 you said.

9 MS. HAMILTON: Yes.

10 THE COURT: Okay, let me look.

11 Yeah, I'll do that. We'll deal with that. I have an
12 idea what it is, but I don't think it's a big deal; but you're
13 right that I should know the answer to that one. So we'll
14 raise that with her inside the jury room.

15 Okay. 217. 217, anybody want to speak to 217?

16 MR. SOROSKY: We have no objection to the jury, but
17 there is a financial situation.

18 MR. SCHAR: Yes, Judge, I think we agree.

19 MR. SOROSKY: Whatever the Court feels.

20 THE COURT: Yeah, it's two things. It's not only her
21 financial situation, but the letter of the employer was pretty
22 compelling, too.

23 This is basically a one-person shop, so I'll let her
24 off for that.

25 218. Give me one second, I want to look at this

1 carefully.

2 His description of his criminal history is verified
3 by the report I have, so he was truthful and candid and
4 actually sort of had the right charge, although it's a little
5 different. It's illegal receipt of goods, but that's usually
6 the guy who stands by the door and takes the handoff, but --
7 so we're okay with that one.

8 Now on the merits of it. Anybody have objection to
9 him?

10 MR. SCHAR: I don't have an objection, just falls
11 under the same hardship issue, Judge, I guess.

12 THE COURT: What do you think?

13 MR. GOLDSTEIN: Your Honor, there were two hardship
14 issues. There was a financial and then the trip, the May
15 11th --

16 THE COURT: Well, the trip I can fix. The hardship
17 issue is another issue, and this is a different kind of
18 hardship issue largely because I have to get some kind of
19 financial data from him and partly because this falls within
20 the realm of maybe it's a problem and maybe it's not, so I can
21 get some more financial information from him assuming there is
22 no hardship.

23 MR. SOROSKY: We would have no objection to your
24 Honor ruling on what you have now.

25 THE COURT: Yeah, but assuming there's no hardship,

1 is there an objection to him?

2 MR. SOROSKY: No, no, not from me.

3 MR. SCHAR: No, Judge.

4 THE COURT: Okay. I'll think about it.

5 Our count is now 43? Not including 218.

6 MR. SCHAR: Are we including 216, Judge?

7 THE COURT: Wait a minute, let me go back a second.

8 Yeah, I'm not -- assuming what is likely to come out,

9 I'm counting 216 as in. Are we 43, 44, something like that?

10 MS. HAMILTON: I think 44.

11 THE COURT: Okay.

12 MS. HAMILTON: We should have three from today --

13 THE COURT: Right.

14 MS. HAMILTON: -- and we had 41 before.

15 THE COURT: I think that's enough, so I think

16 depending on what 216 says, we'll deal with it.

17 Now we turn to the issue that was posed

18 hypothetically last time. In what order are you going to

19 exercise peremptory challenges? You have two choices. The

20 existing numerical order is number one. The other choice is

21 we randomize them again.

22 Any one of you want to express a view on this?

23 MR. SCHAR: Judge, I think it's the government's

24 view -- you're talking about randomizing after peremptories

25 have been --

1 THE COURT: No, I was talking about randomizing them
2 now before you exercise the peremptories. Ordinarily not an
3 option, but since you're not going to do the peremptories
4 until Monday morning, we can do it.

5 MR. SCHAR: Can I have a moment, Judge?

6 THE COURT: Right.

7 (Pause.)

8 MR. SOROSKY: Could we have a ten-minute adjournment?

9 THE COURT: Yes, not only can you have a ten-minute
10 adjournment, but it will take us ten minutes to get together
11 for our jury room hearing with respect to 216.

12 (Recess from 3:01 to 3:27, resuming in jury room with
13 Mr. Schar, Ms. Hamilton, Mr. Niewoehner, Mr. Reibman and
14 Mr. Goldstein present.)

15 (Prospective Juror No. 216 enters jury room.)

16 THE COURT: Hello.

17 PROSPECTIVE JUROR: Hello.

18 THE COURT: I'll sit right here.

19 This little conversation is not as ominous as it may
20 seem to you.

21 PROSPECTIVE JUROR: Hope not.

22 THE COURT: And you're in here privately because we
23 don't want to embarrass anybody. It was answer 42. You've
24 been interviewed by the FBI regarding a neighbor and the State
25 Department regarding an employee. The State Department

1 regarding an employee looked like a clear background
2 investigation.

3 What was the first one?

4 PROSPECTIVE JUROR: I don't know honestly. They just
5 came to the house and said that they were investigating my
6 neighbors. They couldn't go into detail, but they had some
7 questions for me and asked if I'd be willing to answer them,
8 and it was all very strange questions. If I've ever noticed,
9 you know, weapons, if I felt fearful at any time --

10 THE COURT: Right.

11 PROSPECTIVE JUROR: -- being near them, and the
12 neighbors were actually really mild-mannered, quiet, totally
13 kept to themselves people. So I have no idea what it was
14 about, but they --

15 THE COURT: Are they still your neighbors?

16 PROSPECTIVE JUROR: No. They just up and moved one
17 night and left the house as is, and they've been gone since.

18 THE COURT: Okay. Do you remember their names?

19 PROSPECTIVE JUROR: It was a Vietnamese family.
20 Their last name was like N-Y-G-Y-E-N. I'm not sure how to
21 pronounce it.

22 THE COURT: N-G --

23 PROSPECTIVE JUROR: N-G-Y-G-E-N.

24 THE COURT: U-Y-E-N?

25 PROSPECTIVE JUROR: Yes, that's it. I didn't know

1 them very well, so my answers --

2 THE COURT: Okay. And what was -- do you remember
3 what their address was?

4 PROSPECTIVE JUROR: They were just to the right of
5 me, so it would have been 8644 Sheer Drive.

6 THE COURT: But you don't know what they -- what this
7 interview was about.

8 PROSPECTIVE JUROR: I have no idea.

9 THE COURT: No.

10 PROSPECTIVE JUROR: All right. That's fine.

11 PROSPECTIVE JUROR: Some sort of criminal
12 investigation of some sort --

13 THE COURT: Okay.

14 PROSPECTIVE JUROR: -- I'm guessing from their
15 questions.

16 THE COURT: Okay, thanks. You can go back to your
17 prior area.

18 PROSPECTIVE JUROR: Okay.

19 (Prospective Juror 216 exits jury room.)

20 THE COURT: We'll do some administrative stuff while
21 we're still here. I'm leaving 216 on.

22 MR. SCHAR: Judge, I think just on her and one other
23 juror, one of the case agents, Jay Hagstrom, thinks that she
24 looks familiar, is potentially the mother of someone who plays
25 hockey against his son. She hasn't said anything, and I don't

1 know if she saw him or not.

2 He doesn't know her, but I, just for the record,
3 wanted to let you know that there's that. And then 207 who I
4 think is the teacher teacher whose husband is the --

5 THE COURT: Right.

6 MR. SCHAR: Her husband, this is Agent Cain, either
7 taught at or was the principal in one of the schools which his
8 son went some years ago. He doesn't know her. He doesn't
9 know the principal. The name just rang a bell, just wanted to
10 put it on the record so everyone was aware of it.

11 THE COURT: Well.

12 Now, I took a look just for the heck of it at the
13 upcoming ones. The next one up is 220, and 220: "Uncle is a
14 Chicago policeman for 30 years. One of my good friends is
15 Patrick Elwood, Fox 32. John Kass is also a dear friend."

16 I think you might not regard this as a desirable
17 juror, and I believe were you to make a challenge for cause, I
18 would grant it. So I'm going to put him to one side on the
19 list of other possible interviewees in case we have to.

20 The next one has correctly answered: Front desk
21 clerk of a legal department in South Shore, famous place in
22 its day, long before you were born, probably before I was
23 born. Worked for off-track betting parlors. Something in
24 here I pulled this out for -- oh, yeah, this is it.

25 Have you read, formed any views: Thought he should

1 have taken a deal and been done with it rather than waste
2 money on second trial.

3 Might this cause you to make a challenge for cause?

4 MR. GOLDSTEIN: Is there anything else in there?
5 Most likely, yes.

6 THE COURT: Well, one other little thing. What's the
7 arrest one? What number is that, oh, No. 28. Oh, she also
8 has an excuse. I just started a job three months ago after
9 being off work for over a year. I work three, four days a
10 week, Monday, Wednesday and Thursday and sometimes on Friday
11 and Saturday, in the mornings. I can't take off for jury duty
12 at this time.

13 Not exactly why I'm sure that's the case because she
14 is married, her husband is a security guard, and I don't see
15 children, so maybe that's not so high, other than it's a minor
16 indication that she does not want to serve.

17 When I looked up the sheet, maybe this is not a
18 match, and it's not an offense anyway. It's an order of
19 protection. It's not enough of a match, and it's on NYPD, so
20 it's not her. So that's all you've got is whatever it was I
21 just said which I've probably forgotten. He should have taken
22 a deal --

23 MR. GOLDSTEIN: Should have taken a deal.

24 THE COURT: -- which is kind of interesting because
25 he didn't offer -- he was not offered a deal. Interestingly

1 people -- something sticks in their mind. He wasn't
2 offered -- he offered a deal.

3 MR. GOLDSTEIN: It was that stupid motion.

4 THE COURT: Right, the stupid motion.

5 He offered a deal, but that's not -- she's taxing him
6 with something he could not have done.

7 MR. GOLDSTEIN: We would move for cause.

8 THE COURT: Yeah, okay.

9 So let's take a look at 222. This is -- oh, this is
10 the one I was looking for last time. This is -- and this one
11 does have a sheet. This one has a sheet.

12 She, I believe, lives in her parents' home, which
13 makes sense because she lists herself as single. She is an
14 on-and-off employee. She's a cashier. Very scattered work
15 record. Worked at one place almost two years question mark,
16 two weeks at a Comfort Inn, Denny's for five months. I
17 cashiered, bagging and cleaning. She has three children.
18 Lives alone except for three children. She does have a rap
19 sheet. She says that she's got a felony burglary, two years
20 probation, and misdemeanor supervision and then another
21 felony.

22 According to the rap sheet, I have only one
23 conviction, a burglary conviction. Last arrest, 2008. The
24 official record and it's an unusual name, so I think the
25 record's a valid record.

1 Okay. 2001, burglary, Mount Vernon, no disposition
2 listed. 2007, CPD issuance of a warrant. 2007, four months
3 later, three months later, criminal trespass to vehicle,
4 possession of cannabis. 2008, March, aggravated domestic
5 battery. Maybe I've got more detail here.

6 Okay. Oh, this is interesting. Aggravated domestic
7 battery, aggravated domestic battery. This comes from
8 March 11th, 2008. Then literal description, attempt murder.
9 Disposition, nolloed. Oh, and then -- oh, they must have
10 nolloed the lesser charge because the next thing is guilty on
11 attempt murder. This must have been some -- don't record this
12 word -- bullshit attempt murder charge. Disposition 183 days,
13 credit time served.

14 MR. GOLDSTEIN: Yeah.

15 THE COURT: That's a cute one.

16 MR. GOLDSTEIN: Must have had a good lawyer.

17 THE COURT: Turned herself in because they quashed
18 the warrant. The vehicle and the cannabis. Nolloed both of
19 them. 18 months on domestic battery, special conditional
20 discharge.

21 Here's the Mount Vernon burglary. Guilty the
22 burglary. Restitution, fine, 833 bucks. 150 hours public
23 service. 30 months' probation. Successfully completed.
24 That's it.

25 She does not feel that this is a financial burden

1 since it replaced a zero-dollar-a-day income with a \$40-a-day
2 income, and she and the three kids are ensconced in their
3 parents' home. Not a challenged juror, but probably not the
4 most attractive one.

5 Let's take a look at 223 just for the heck of it.

6 Another criminal history, although this one is
7 perfectly understandable. This guy runs a heating and
8 electrical company. All of his answers are fine. He
9 correct -- I believe correctly states -- I think I already
10 looked this up -- yeah, he correctly states his rap sheet,
11 which is his rap sheet is that 26 years ago, he took a fall
12 for possession of cannabis. Got probation.

13 Operates a small heating and air conditioning
14 business. It's him and one assistant. He's got a kind of
15 hardship thing. What he says is trial extends through warmer
16 weather, I may lose business. This is the busy season.

17 And then we've got -- where are you? Here you are.
18 No, you're not here.

19 So I would say that of the next ones up, this is not
20 a particularly stellar group, so I would like to go with what
21 we've got if we can, and I think we can.

22 Now, what do you want to do about randomizing? Yes?
23 No? Maybe?

24 MR. GOLDSTEIN: We -- we do not want randomized. We
25 want it the way your Honor did the first trial, which is

1 chronological.

2 MR. SCHAR: Can I put maybe? We're just are checking
3 a few cases; and depending upon that, we'll be able to give
4 you a position.

5 THE COURT: Yeah. It's a dice roll. That's why some
6 judges do it.

7 There is also the other thing, which is to randomize
8 after you've elected the peremptory challenges. Most people
9 do not like that.

10 MR. GOLDSTEIN: We do not like that.

11 MR. SCHAR: I think we're in agreement with that,
12 Judge.

13 THE COURT: Right, right. I actually would like to
14 have that as a matter of law, general law and general
15 practice; but I regard it as inappropriate for me to impose
16 that upon you because it's the way I like it. Maybe some day
17 I'll be able to sell a court on it. And in all honesty, if I
18 were a lawyer, I would hate it. But that's that.

19 MR. GOLDSTEIN: Just so I understand the two options,
20 the first option is the exact way you did it last time, which
21 is 1 through -- the first 18 go on.

22 THE COURT: First 18 unperemptory challenges go on.

23 MR. GOLDSTEIN: And 13 through 18.

24 THE COURT: In the order in which their names were
25 drawn, the original randomization.

1 MR. GOLDSTEIN: And then the randomization option is
2 you would take who you have right now, put it in the pot, and
3 it would come out reordered.

4 THE COURT: No, what I would have now is, I would
5 probably take 40 and randomize those 40 and then you would
6 elect your peremptory challenges against that randomized group
7 with the understanding that if someone doesn't show up, the
8 two or three extras we have will replace the individuals, and
9 we'll do that on the basis of the lower number.

10 Or maybe we can do it on places of whatever number is
11 closest to the number they have, but I don't want to do that,
12 so the lower numbered one goes first into whatever vacant slot
13 there is. Customarily, there isn't a vacant slot, but there
14 might be.

15 Then you have a randomized 40, and you select
16 whatever you want to select, but they are then ordered, they
17 are then placed in seats in the order of their new numbers.

18 MR. GOLDSTEIN: Okay.

19 THE COURT: In other words, you will know who the
20 alternates are going to be.

21 MR. GOLDSTEIN: And you'll know the order of it
22 before you use your peremptories.

23 THE COURT: Yeah.

24 MR. GOLDSTEIN: Okay. So you're basically just
25 reshuffling.

1 THE COURT: Yeah, I'm reshuffling. So it's not the
2 disaster that would be if you would deal with being flipped by
3 true randomization, which I think is why it doesn't make a
4 hell of a lot of difference to you, but it's only a slight
5 advance from my point of view.

6 But I'm perfectly willing to do it the way I did it
7 the first time because that's the way I did it the first time,
8 okay?

9 MR. GOLDSTEIN: We did, your Honor, have, I think --

10 THE COURT: Three more.

11 MR. GOLDSTEIN: -- three more that we're just typing
12 up right now.

13 THE COURT: Right, right. You didn't have to type
14 them.

15 MR. GOLDSTEIN: Type, write, do you want to read
16 Shelly's handwriting?

17 THE COURT: Sure. When are we going to have this?

18 MR. GOLDSTEIN: Very soon in the next couple of
19 minutes.

20 THE COURT: Next couple of minutes is fine.

21 Okay. Then I think we'll go out there and tell
22 everybody that we have completed the examination of all the
23 jurors, the last juror having been examined in court being, in
24 fact, the last prospective juror who will be interviewed.

25 We will deal with any remaining challenges, and then

1 we will send the jurors home with instructions to report on
2 Monday.

3 MR. SCHAR: Before we leave, we'll confirm with your
4 Honor the -- what we understand to be the ones that are
5 remaining, is that possible?

6 THE COURT: What do you mean the ones that are
7 remaining?

8 MR. SCHAR: The 42 or 43 just so everyone's on the
9 same page in terms of who's actually --

10 THE COURT: If you feel there has to be, we're going
11 to do that. Of course, we're going to do that. We may do it
12 twice. This is a place where you do not want to miscount
13 under any circumstances.

14 MR. SCHAR: 157 is still an open issue?

15 THE COURT: 157 is in open play and I'm going to
16 rule.

17 MR. SCHAR: Okay. And I think I noted at 48 hours --
18 whether you said it was 24- to 48-hour issue and it wasn't,
19 but it's not moving into the issue. There's one kind of
20 preopening issue we'd like to address.

21 THE COURT: You can address absolutely anything after
22 we're done with the jury.

23 MR. SCHAR: Thank you, Judge.

24 (Proceedings heard in open court:)

25 THE COURT: Counsel, come to the lectern.

1 We have done the *in camera* hearing with respect to
2 one question asked of 216, and I am satisfied that it would
3 have no effect on the juror's service.

4 We now have one -- 218 to deal with, which I think we
5 already have dealt with, and it's basic, but since we last
6 dealt with this, I was handed a letter from his supervisor, or
7 from his boss, who says: No. 218 -- I'm changing it a
8 little -- is a technician at freight services. I'm omitting
9 the name. It's a very technology-driven company. We're
10 entering into our busiest time of the year. Further, we're
11 moving our Charlotte, North Carolina branch to a new facility
12 in May. This requires heavy involvement of our IT staff. He
13 is scheduled to be in Charlotte the week of May 10th. His
14 absence would leave us shorthanded. We would appreciate his
15 being excused from jury duty at this time.

16 This particular request holds no weight. It's mere
17 convenience.

18 The next line is: The company has a policy to pay an
19 employee for up to three days of jury duty per calendar year,
20 and that going without pay for this extended period would be
21 an extreme financial hardship.

22 The employer is not actually saying that it would be
23 an extreme financial hardship. He's saying that this is what
24 the prospective juror told him. So it doesn't add anything to
25 the mix.

1 Considering his place on the list, I think we can ask
2 him to come in with his financial statements the next day and
3 see where we go from there.

4 The motion?

5 (Tendered.)

6 THE COURT: I have read the motion, and I think I
7 understand the motion. Can I have the government's response
8 to it?

9 MR. SCHAR: Judge, I -- I don't disagree, and your
10 comment, your comment was it could be a basis, and people put
11 down various things and then your Honor went through the
12 specific individuals and in every single situation that's
13 addressed in this motion, I believe, rehabilitated those
14 individuals or didn't even need rehabilitation, I'm not sure
15 that's the right word.

16 What you did is you more accurately questioned them
17 about their initial reaction of what they wrote down and then
18 their now understanding of what the law required, whether they
19 could do it. Your Honor made individual determinations as you
20 went with each individual juror using obviously your view of
21 the credibility in their answering questions as well as having
22 fully, more fully explained what was required of them, and
23 they all indicated they could do what was required to be a
24 fair and impartial juror.

25 So I don't think the comment that was made changes

1 the analysis of any of the jurors.

2 THE COURT: Your turn.

3 MR. SOROSKY: Well, I would submit the Court, in
4 ruling on Juror 193, set a certain standard or policy, and
5 we're just asking --

6 THE COURT: What did I say? What did I rule on 193?

7 MR. SOROSKY: Pardon me?

8 THE COURT: What did I rule on 193?

9 MR. SOROSKY: We moved to exclude 193 because 193
10 answered -- what?

11 I believe she answered everyone thinks he's guilty,
12 and the Court did -- and the Court responded, well, that she
13 did not say I think he's guilty. Had she said I think he's
14 guilty, Mr. Sorosky, you might have had a compelling argument.

15 THE COURT: You noticed the word might is --

16 MR. SOROSKY: Right, might, might. I said that's
17 what you said.

18 THE COURT: Okay.

19 MR. SOROSKY: I'm trying to quote you exactly.

20 THE COURT: Does somebody have 190? I think that's
21 back in my chambers.

22 MR. SOROSKY: 193.

23 THE COURT: 193.

24 MR. SOROSKY: And 193 stands, and as much as we would
25 love to have her be excused, we are accepting her being on the

1 jury. We don't want it, but we live with that.

2 But in light of your Honor's ruling that I might have
3 had an effective argument, I would ask the Court to revisit
4 those three jurors who did say substantially I think he's
5 guilty.

6 Juror 116 -- and these were his answers: My personal
7 bias is that he's guilty. Every chance he gets, he keeps
8 saying he will testify. I think I would hold it against him
9 if he does not testify.

10 Juror 121 answered: Sounds like the defendant is
11 guilty.

12 Juror 160, who may be perhaps the most egregious,
13 says: I believe he's guilty and has a different private
14 persona and a fake public persona. I followed the trial
15 closely in the news, and my ringtones are downloaded with
16 bleeping quotes of Rod Blagojevich I got from the Springfield
17 newspaper website.

18 Now, how can a man be a fair juror if he goes home
19 tonight and -- and I'm very old fashioned, I'm a low-tech
20 person, but from what I understand this man is saying, instead
21 of the telephone ringing, "ring, ring ring," or whatever it
22 does, it's a quote, a derogatory quote from the defendant.
23 How would this man possibly be a fair juror?

24 THE COURT: Okay, I have a question for you.

25 MR. SOROSKY: Yes.

1 THE COURT: We've been here for quite a while.

2 MR. SOROSKY: Yes.

3 THE COURT: Why am I here?

4 MR. SOROSKY: Why are you here?

5 THE COURT: Yeah.

6 MR. SOROSKY: To get a fair jury.

7 THE COURT: No, no, no. Why am I here? Why am I
8 necessary?

9 MR. SOROSKY: To preside over a fair trial.

10 THE COURT: No, but what you've got here is you
11 submit all of these things to a computer program and you say
12 what things appear on the answer that disqualify a jury or
13 don't disqualify a jury, and then you can rely entirely on
14 what they put in writing.

15 The reason I'm here is to make an individual judgment
16 of whether what the juror has to say, this juror has to say,
17 whether he means it and to what extent he means it and what
18 exactly it is that he means.

19 It would be nice if we had such a system like that
20 because it would save me a lot of time and effort here. I'm
21 sitting here asking questions to the jurors. I really am in a
22 position where I never take my eyes off the jurors except
23 maybe to look down at the next question I might want to ask,
24 and that whole thing is because you can have one juror, two
25 jurors, one saying I think the man is guilty and the other

1 saying I think the man is guilty, and one is qualified and one
2 isn't.

3 Your entire argument is based on the premise that the
4 only thing to be considered are the exact words; and if two
5 people who say exactly the same thing, which is favorable to
6 one side or favorable to the other must be ruled upon in the
7 same way, this is not the process. This is not the law. I
8 consider in every case the issue of what depth of feeling is
9 expressed. Is the witness, in fact, the juror, in fact,
10 prospective juror, in fact, speaking inartfully in the
11 questionnaire? Is the juror saying some things from which he
12 is able to withdraw? That's all what the judge is supposed to
13 do.

14 You have, I think, an unjustified faith in the
15 proposition that what these people put down on these
16 questionnaires actually means something when you don't know
17 much about them that is still in writing or is still in
18 speech, and you draw all kinds of implications from that. I
19 don't do that. I sit there and listen to them, and the truth
20 is for the three you mentioned, I thought they would be fair
21 jurors. Part of it rested on their demeanor. Part of it
22 rested on their response to other questions.

23 So the argument fails, and I deny your motion to
24 recuse them.

25 So that's where we are with that.

1 Now, the most important thing for all of us is to
2 take a look at this sheet of paper and determine again who's
3 on and who's out, leaving one thing off, 137.

4 MR. SCHAR: 157?

5 THE COURT: 137. I think it's 137. No, it's not
6 137.

7 MR. SCHAR: I think it's 157, Judge?

8 THE COURT: It's 157. I have that here, too.

9 This was a financial reason issue. We have not heard
10 back from him. On the face of the -- of the thing he filed,
11 and to some extent based on his demeanor, but very little,
12 this is a financial hardship for him. Basically, it's him
13 alone. He does this work. So I believe that it will turn out
14 that it was too great a financial hardship.

15 Now, it is possible that he's been lying to us. I
16 don't think so. But if he has been, we are making a careful
17 effort not only to deal with all the no-shows, but 157's name
18 will be added to the list of people who the jury room will
19 check very carefully.

20 The increasing tendency in some jurisdictions in
21 state courts for people who blow off jury duty and give a lot
22 of phony excuses has been in some jurisdictions widely
23 tolerated and others punished with bloody vengeance, but the
24 federal courts are taking the view now that excuses have to be
25 monitored. The truth is, we don't have the resources to

1 monitor them in all cases, but we have resources to monitor
2 them in some, and this is going to be one of them.

3 I do believe he was honest with me. I'm accepting
4 his hardship. I believe I am done with taking people off or
5 putting people on the list, and we can now get to a count.
6 And I will read off the numbers, and both sides will keep
7 track of how many numbers I have read off.

8 103, 116, 120, 121, 124, 125, 131, 132, 133, 135,
9 140.

10 MR. SCHAR: 136.

11 THE COURT: 13 -- oh, that's right. I put her back
12 in. Yeah, I circled her. That's right. 136, 140, 141, 142,
13 144, 146, 148, 149, 151, 160, 161, 163, 164, 165, 170, 174,
14 175, 176, 179, 181, 183, 184, 186, 187, 189, 190, 191, 192,
15 193, 196, 198, 1 -- 207, 214, 216, 118. Give me a total.

16 Don't say anything. I want everybody to reach an
17 independent count, so tell me when you're done with your
18 count, but don't tell me what the count is.

19 MR. GOLDSTEIN: We have a count.

20 THE COURT: Okay. But Mr. Schar raised his hand, and
21 you didn't raise your hand.

22 MR. GOLDSTEIN: I wasn't aware of the format in which
23 we can --

24 THE COURT: It's a good format.

25 MR. GOLDSTEIN: -- submit our answer.

1 THE COURT: But raising your pad's okay.

2 Do you have a count?

3 Okay. You go first.

4 MR. SCHAR: 45.

5 MR. GOLDSTEIN: We agree.

6 THE COURT: Well, so do I. So now we have 45.

7 Obviously, the majority of these people will not serve on the
8 jury, but this is the basic pool we're operating with. I
9 expect you to give me your written peremptory challenges at
10 9:00 a.m. on Monday morning.

11 MR. SCHAR: And, Judge, we're in agreement that we
12 can keep the order as it is now.

13 THE COURT: Yeah, that's fine.

14 That being the case, I want to make sure I don't lose
15 anything here, so I'm going to straighten this enormous pile
16 of stuff I have here out, and then we're going to deal with
17 substantive issues.

18 Return this to the government.

19 (Tendered.)

20 THE COURT: The issue of the admission, has this been
21 briefed, fully briefed yet?

22 MS. KAESEBERG: We have not yet filed our response
23 yet, but we can do so by tomorrow if you'd like.

24 THE COURT: By tomorrow?

25 MS. KAESEBERG: Yes.

1 THE COURT: Sure.

2 You wanted to bring up something?

3 MR. SCHAR: I do, Judge. It will take a moment of
4 background to explain the contours of the issue.

5 I believe in opening last time, and certainly through
6 cross-examination, the defense tried to present, for lack of a
7 better phrase, a pseudo-advice-of-counsel defense or an
8 advisor defense, and this obviously was subject to the motion
9 *in limine* which, your Honor has, I think, previously granted
10 and obviously reaffirmed the other day.

11 Specifically as it related to John Harris, the issue
12 is a little more stark and from the government's perspective
13 problematic particularly if they plan on either opening on it
14 or attempting through cross-examination to suggest something
15 that is never going to be proven up, and that is this: As you
16 might recall from the testimony last time, Mr. Harris, while a
17 lawyer, was not special counsel to the defendant on the issue
18 of the Senate seat.

19 He was special counsel on one issue that was
20 completely immaterial to the matters at hand, and that was
21 fronted in terms of the fact he was special counsel on one
22 issue but was not special counsel in relation to the Senate
23 seat.

24 In his statement to the FBI after his arrest in
25 response to various questions related to the Senate seat,

1 while he did not say he was special counsel on the Senate
2 seat, he demurred answering further questions by stating that
3 he was special counsel.

4 Now, obviously at the time, the government expected
5 that the defendant would testify and somehow, despite the fact
6 Mr. Harris will deny there was ever a conversation with the
7 defendant in any context in relation to him being special
8 counsel on the issue of the Senate seat, somehow the defendant
9 might suggest that. That clearly did not happen.

10 We also thought perhaps last time what the defendant
11 might try to do through cross-examination of Mr. Harris was
12 somehow impeach him by suggesting that his statement to the
13 FBI was inaccurate, but, in fact, he was not special counsel.

14 Obviously, they can't use the statement to the FBI
15 for the truth of the matter. However, what ended up happening
16 during the cross-examination of Mr. Harris, was that, in fact,
17 they tried to suggest that what he said to the FBI was
18 truthful and, in essence, use the statement for the truth of
19 the matter, which was at the time improper. That is to say,
20 they weren't suggesting he was lying then. They were
21 suggesting he was telling the truth.

22 At this point, because we don't know what they're
23 going to open on, and particularly because we're concerned
24 about the confusion on what has now become a critical issue in
25 this case, a sense of whether or not the defendant somehow

1 surrounded himself with lawyers and that being a material
2 issue, which, again, I believe your Honor has now ruled they
3 can't go down that road in terms of that argument without some
4 additional prove-up, what we're asking is that they not be
5 permitted to raise the fact that the defendant was -- or
6 Mr. Harris was special counsel at all unless they're going to
7 at some point down the road prove that up through their own
8 case.

9 And in particular when it comes to the
10 cross-examination of Mr. Harris, while Mr. Harris is prepared
11 to say that he misled the FBI in order to stop the interview,
12 that understandably would be relevant; but to the extent that
13 they want to use his statement about special counsel to the
14 FBI and the fact that the only proper way to use that would be
15 for impeachment purposes, under 403 -- because, again, this
16 defense in effect is not proper at this point -- under 403,
17 we're asking that you bar them from asking whether or not he
18 told the FBI he was basically, in effect, special counsel or
19 suggest that he was special counsel on the Senate seat because
20 it can't be offered for the truth, and to the extent it's
21 impeaching at all, it's a confusion issue particularly on a
22 critical point here. It's frankly misleading, and Mr. Harris
23 is going to admit that to the extent it is proper impeachment
24 that, in fact, he did mislead the FBI.

25 I think that is the crux of the issue.

1 THE COURT: Okay. Now maybe you should hear from the
2 defendant what it is they actually want to do.

3 MR. SOROSKY: Well, we're taken a little bit by
4 surprise by this, and traditionally the government would file
5 a written motion. We're not asking for a written motion
6 because we understand what they're saying, and we would like
7 some time to reply to this, whether it's orally or in writing,
8 and I -- I don't know how urgent this is in relation to the
9 proceedings.

10 I mean do you want it Monday, or, you know?

11 THE COURT: I think he wants it Friday.

12 MR. SOROSKY: That's tomorrow.

13 THE COURT: Tomorrow.

14 MR. SOROSKY: Okay.

15 THE COURT: And while you're about it, you can deal
16 with the issue of whether you are going to suggest, as you
17 attempted to suggest in the last case, that the defendant
18 believed his actions were legal because a bunch of lawyers
19 didn't say anything when he made proposals.

20 I've dealt with this before in a variety of ways,
21 partly because as a defense, it doesn't work. It's a very
22 narrowly circumscribed defense, and you cannot infer approval
23 from silence, and I don't want you to do that. And the reason
24 I don't want you to do that is because I will give an
25 instruction to the jury which says that you can't infer

1 approval from silence and then tell them that it's an
2 illegitimate defense, which is the only way to stop them from
3 going down that path.

4 This is, incidentally, entirely different from -- and
5 that's basically what I'm going to stop you from doing, and I
6 can believe that I can stop you from doing it in a way that
7 will deprive -- which will take away any possible force from
8 the statements even during questions -- even if they're in the
9 form of questions.

10 I am not addressing the issue presented by the fact
11 that the defendant, if he does, gets on the witness stand and
12 said I did believe it was legal, which is something he's
13 entitled to say even if he doesn't have a lawyer to back him
14 up. He can offer his own legal theory. He can do what John
15 Cheek did in this very courtroom, explain why, in reading the
16 history -- the early colonial documents, John Cheek believed
17 that white men were exempt from the income tax. Didn't do him
18 a lot of good with the jury, but if your client gets up and
19 testifies that he thought it was legal, I'm quite sure
20 whatever he says is not going to be off the wall the way what
21 Cheek said was, and that's a different issue.

22 But pretty much the only way you can get that defense
23 in at all is for somebody to stand up and say I thought it was
24 legal. If I didn't think it was legal, I wouldn't have done
25 it, at which time if you have a defendant who says this, there

1 might be things you can introduce that might support his
2 belief in one way or another. This is not an
3 advice-of-counsel defense, but the way you did try to do it is
4 you tried to get into evidence a belief of your client or a
5 jury can infer that your client believed that his act was
6 legal without having any evidence of that.

7 And the way you did that was this totally
8 inappropriate kind of suggestion that there were a bunch of
9 lawyers in the room and nobody said don't do it, and that
10 creates a problem in evidence, so I don't want you to do it.

11 If you want to say that Harris is a liar because he
12 told the FBI he was special counsel when he wasn't special
13 counsel and that for this reason you can't trust other things
14 Harris says, sure. But to establish Harris as special counsel
15 like he was special counsel doesn't help you in any way unless
16 you want to try this, the thing that you tried last time,
17 which was he was special counsel and this is one of the patent
18 stones laid down to get you to the point where, when the
19 defendant takes the witness stand and says I thought it was
20 legal, there was no reason I should have thought it was
21 illegal because no one has said anything.

22 And I think the government had some objections there,
23 but they let some of it go, and the reason they let some of it
24 go is the lawyer got up and said he's going to take the stand.

25 They can't trust that he will do so. The fact of the

1 matter is whoever makes the opening statement in this case, if
2 you stand up and say the governor's going to take the witness
3 stand, I'm not going to rely on that on my rulings, as I did
4 last time. I let stuff in because I figured, well, this is
5 part of it. If you want to foreshadow what the defense is
6 going to be, fine, I have no objections to that.

7 But if you want to do Harris and special counsel, the
8 only way you can do it is to use the fact that he said this to
9 the FBI because he wanted to stop talking to them and it
10 wasn't true. That could have some use for you, but to hook it
11 up with some defense of I thought it was legal, I had a
12 good-faith belief that it was legal, no. I think this is
13 fairly clear.

14 And the reason I'm giving you this caution is I
15 refrained from giving instructions in the first trial because
16 I believed that the defendant was going to take the stand and
17 he'd be cross-examined on this. And his answers will be
18 better than John Cheek's were on cross when John Cheek said
19 some ancient documents from state governments at the time of
20 the Revolution -- and bear in mind this is a guy who, with his
21 lunatic theories, actually got the Supreme Court of the United
22 States to mandate that he be able to say them in court to a
23 jury, which is why I got the case on remand.

24 So you have a pretty broad right to say I thought it
25 was okay, but you can't do it on the basis of legal advice

1 unless you got the requirements, and it's a very, very tough
2 defense. There have to be all kinds of prerequisites. You've
3 got to cross T's and dot I's, and none of them were done here.

4 So basically that's where we are. I think what I've
5 just said should be understood.

6 Do you have anything else?

7 MR. SCHAR: Judge, just as an issue of clarification,
8 I understand the right certainly to suggest that Mr. Harris
9 was dishonest with the FBI.

10 THE COURT: Yes.

11 MR. SCHAR: I think our concern is that the --
12 there's still the -- will be out there the suggestion that
13 somehow he was special counsel. And, as you pointed out, the
14 instruction, I'm not sure, while I think helpful, if the issue
15 is he misled the FBI and there's value in that point, which I
16 think there obviously is --

17 THE COURT: They will not be allowed to suggest by
18 question or argument that he was special counsel, and I think
19 I've made that clear, which means, for example, you will not
20 start a question out with saying, well, when Mr. Harris was
21 your special counsel because that's a statement made without
22 support in the record.

23 MR. SCHAR: Okay.

24 THE COURT: I think -- anything else from you?

25 MR. SCHAR: No, Judge.

1 THE COURT: How about from you?

2 MR. SOROSKY: No.

3 MR. GOLDSTEIN: No, your Honor.

4 THE COURT: Then I think we're done, and I don't
5 think I have to see you tomorrow unless something comes up,
6 and I will be here.

7 MR. SCHAR: Thank you, Judge.

8 THE COURT: Thanks.

9 MR. SOROSKY: Monday at 9:00 or 9:30?

10 THE COURT: 9:00.

11 MR. SOROSKY: 9:00. Okay.

12 THE COURT: Oh, wait, wait, we forgot the most
13 important thing of all. I can't believe I forgot this.

14 How long are you going to take in the opening?

15 MR. SCHAR: Judge, we should not be more than an
16 hour, probably a little less.

17 MR. GOLDSTEIN: About the same amount of time.

18 THE COURT: Okay. So we will have witnesses unless
19 some disaster occurs.

20 Now, the first witness you call, this is my second
21 question.

22 MR. SCHAR: It would be Agent Cain, and I believe we
23 can -- it may take, depends what time we start, but I think we
24 could get through direct and cross on Monday.

25 THE COURT: Okay. You're prepared for the cross,

1 right?

2 MR. SOROSKY: Right.

3 THE COURT: Okay. That will be fine.

4 MR. SOROSKY: So that would probably be the only
5 witness on Monday.

6 MR. SCHAR: I think that's right.

7 THE COURT: I think so, too. Okay? See you on
8 Monday.

9 (Court adjourned, to reconvene at 12:00 p.m. on
10 4/29/11.)

11 CERTIFICATE

12 I certify that the foregoing is a correct transcript from
13 the record of proceedings in the above-entitled matter.

14 /s/Kathleen M. Fennell

15 _____
16 Kathleen M. Fennell
17 Official Court Reporter
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